

UNITED STATES OF AMERICA, ) Case No. 16-00110-01-CR-W-DGK  
 )  
 Plaintiff, ) Kansas City, Missouri  
 ) January 4, 2017  
 v. )  
 )  
 JAMES E. EVERETT, JR., )  
 )  
 Defendant. )  
 )

APPEARANCES:

For the Plaintiff:

Mr. Jeffrey Q. McCarther  
Mr. Bradley K. Kavanaugh  
Assistant United States Attorney  
400 E. Ninth St., Ste. 5510  
Kansas City, MO 64106  
(816) 426-3122

For the Defendant: Mr. W. Marc Ermine  
Federal Public Defender's Off.  
818 Grand Blvd., Ste. 300  
Kansas City, MO 64106  
(816) 471-8282

Court Audio Operator: Ms. Dorothy Myers

Transcribed by: Rapid Transcript  
Lissa C. Whittaker  
1001 West 65th Street  
Kansas City, MO 64113  
(816) 914-3613

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1 (Court in Session at 2:18 p.m.)

2 THE COURT: Okay. Good afternoon, everyone. I have an  
3 initial appearance and arraignment. Is this on James Everett?  
4 Is that right?

5 MR. McCARTHER: Yes, sir.

6 THE COURT: And so, let me go ahead and get the -- well,  
7 the number of the case is 16-110-01-CR-W-DGK. Let me have the  
8 AUSA's appearance, please.

9 MR. McCARTHER: Jeff McCarther on behalf of the United  
10 States. I'm joined at counsel table by AUSA Brad Kavanaugh who  
11 will be sitting with me at trial in this matter, Your Honor.

12 THE COURT: Okay. And let me have counsel for Mr.  
13 Everett.

14 MR. ERMINE: Marc Ermine on behalf of Mr. Everett.

15 THE COURT: Okay. We have it set for an initial  
16 appearance and arraignment on the Indictment. You've had a copy  
17 of the Indictment in advance?

18 MR. ERMINE: Yes, sir, we have.

19 THE COURT: Any problem with waiving the formal reading  
20 and discussion of the penalty ranges here?

21 MR. ERMINE: No, sir. That's fine. We've -- I've  
22 discussed it with Mr. Everett.

23 THE COURT: Okay. Mr. Everett, I'm not going to read  
24 this Indictment to you. It's apparently in three counts. Have  
25 you had a chance to review it and talk about it with your counsel

1 here?

2 MR. EVERETT: No, Your Honor.

3 THE COURT: Pardon me?

4 MR. EVERETT: No, Your Honor. I just seen it before  
5 coming into the courtroom.

6 THE COURT: Okay. That's all right. We'll just go  
7 through it then. If you would, look at the Indictment. Do you  
8 have a copy of it there in front you?

9 MR. EVERETT: Yes, Your Honor.

10 THE COURT: Okay. There are three counts. The first  
11 count is threatening a federal law enforcement official or  
12 officer. There you're charged with an event on March 10<sup>th</sup> of  
13 2016. It says that you did threaten to assault a Federal  
14 Protective Service officer with intent impede, intimidate,  
15 interfere with or retaliate against the officer while engaged in  
16 the performance of official duties in violation of 18 U.S.C.  
17 Section 115(a)(1)(B) and (b)(4). The second count is the same  
18 date, March 10<sup>th</sup> of 2016. There it says that you, having been  
19 convicted of a felony, that's a term exceeding one year in  
20 prison, that you possessed this -- you possessed a firearm  
21 described as a Ruger 9mm pistol, Serial Number 316-67472. And  
22 the Government alleges that it had gone in interstate commerce  
23 before it's alleged that you had it. The third count is a  
24 misdemeanor count that's an event again, March 10<sup>th</sup> of 2016. It  
25 says there that you knowingly and intentionally possessed a

1 quantity or a substance containing heroin. It's a Schedule I  
2 controlled drug in violation of the Federal Code. If you look  
3 back here at the first page of the Indictment, on the right-hand  
4 side of that it will tell you about the penalty ranges here you  
5 face on these counts. On Count One, that carries a sentence of  
6 not more than six years in prison, a \$250,000 fine, a three years  
7 supervised release term to follow incarceration and a \$100  
8 special assessment. Count Two is a felon in possession count.  
9 That carries a penalty of not more than ten years in prison, a  
10 \$250,000 fine, three years on supervised release and a \$100  
11 special assessment. Count Three carries a penalty range of not  
12 more than one year, a fine of not more than \$1,000, supervised  
13 release of not more than one year and a \$25 mandatory special  
14 assessment. And, of course, those penalties, upon conviction of  
15 any or all of them, could be stacked one on top of the other. I  
16 need to remind you of your rights, Mr. Everett. Under the Fifth  
17 Amendment, you have the right to remain silent. Anything that  
18 you say about this matter to anyone other than your counsel could  
19 be and would be used against you here in court. Under the Sixth  
20 Amendment, you continue to have your right to counsel here, and  
21 the Federal Defenders we've brought in to represent you and will  
22 continue to represent you here as we process this case.

23 Concerning the three counts, Mr. Ermine, what are the pleas?

24 MR. ERMINE: Not guilty to all counts, Your Honor.

25 THE COURT: Mr. Everett, your pleas are not guilty, is

1 that right?

2 MR. EVERETT: (No audible response).

3 THE COURT: I will assume that to be the case and we'll  
4 go ahead and enter those pleas into the record here at the  
5 District Court. Is there any need for us to do anything with  
6 regard to the pretrial filings? We have it set on the February  
7 12<sup>th</sup> trial docket. Is there anything new in this Indictment?

8 MR. McCARTHER: Your Honor, there is an additional count  
9 in this Indictment which is Count One, threatening a federal law  
10 enforcement officer. Defense counsel has received all the  
11 discovery that the United States has in its possession --

12 THE COURT: Okay.

13 MR. McCARTHER: -- and all discovery relevant to this  
14 issue, so.

15 THE COURT: Okay. So I'm going to do an order  
16 indicating that defense counsel is required to file any  
17 additional motions that you want to have filed within ten days  
18 and the Government will have seven days to respond. And, you  
19 know, let us know if you want to have a hearing on something.  
20 We'll go ahead and set it down and do it. Okay. So that's that  
21 on the initial appearance and arraignment on the Indictment. We  
22 also have a hearing set on the matter for -- and I didn't mean to  
23 cut you off. Did you want to be heard about any of that?

24 MR. ERMINE: No, sir.

25 THE COURT: I assumed not, so.

1 MR. ERMINE: Thank you.

2 THE COURT: Yeah. So anyway, the next piece is the  
3 issue of the suppression issue here. And I've read the  
4 information supplied by the parties and I think we're ready to  
5 proceed with the evidence here. And so you've got laboring oar.

6 MR. McCARTHER: Thank you, Your Honor. The United  
7 States would call FPS Inspector David Yadon to the stand.

8 THE COURT: Okay. Officer, if you just come up here,  
9 I'll place you under oath, sir. Just come right up here. Raise  
10 your right hand, please.

11 DAVID YADON, GOVERNMENT'S WITNESS, SWORN

12 THE COURT: Go ahead and take the stand over here on  
13 your left. When you get up there, it's going to make a noise, it  
14 just adjusts for weight, so don't get concerned about it.

15 DIRECT EXAMINATION

16 BY MR. McCARTHER:

17 Q. Sir, could you please state your name for the record?

18 A. David Yadon.

19 Q. What's your occupation, sir?

20 A. I'm a federal police officer with the Federal Protective  
21 Service.

22 Q. What's your total length of service in law enforcement?

23 A. Three years.

24 Q. As part of the Federal Protective Service, what your duties  
25 and responsibilities?

1 A. Duties and responsibilities are the safeguard of federal  
2 occupants in federal facilities under GSA control.

3 Q. And what's your current assignment area?

4 A. Current assignment area is the Kansas City metro area.

5 THE COURT: Officer, why don't you move up a little bit.  
6 Scoot the thing up a little bit closer. You kind of need to get  
7 picked up a little bit better.

8 BY MR. MCCARTHER:

9 Q. I'll ask that question again. What's your current assignment  
10 area, sir?

11 A. The Kansas City metro area.

12 Q. And what types of crimes do you wind up investigating in your  
13 role as a FPS Inspector?

14 A. Any types of normal crimes, thefts, assaults, drugs, anything  
15 that a normal police officer would investigate, we investigate as  
16 well.

17 Q. And these would be crimes that would take place on federal  
18 property, is that correct?

19 A. Correct.

20 Q. I want to take you to the date of March 10<sup>th</sup>, 2016, do you  
21 remember that date?

22 A. I do.

23 Q. Were you working on that day?

24 A. I was.

25 Q. Specifically, around 8:30 in the morning, where were you?

1 A. I was at 601 East 12<sup>th</sup> Street, Kansas City, Missouri.

2 Q. And is that in the Western District of Missouri?

3 A. It is.

4 Q. What is at that address?

5 A. That is the Richard Bolling Federal Building.

6 Q. And why were you at the Richard Bolling Federal Building?

7 A. That is where my office is at.

8 Q. At the time you were in your office, were you carrying a  
9 communications radio on your person?

10 A. I was.

11 Q. And what's the purpose of having that radio?

12 A. For dispatch to any types of incidents that would need law  
13 enforcement response.

14 Q. Did anything unusual come across your radio around 8:30 in  
15 the morning that day?

16 A. It did. The Protective Security Officers or PSOs that we  
17 have stationed in the lobby stated they had a disorderly person  
18 in the lobby and they needed assistance with that person.

19 Q. And what was your response?

20 A. That I said go ahead, show me en route to the 12<sup>th</sup> Street  
21 entrance of 601 East 12<sup>th</sup> Street.

22 Q. And where did you report? Where did you go?

23 A. I went down from the second floor to the first floor of the  
24 building.

25 Q. And what did you observe upon your arrival in the lobby of



1 that building?

2 A. The guards indicated that the person had come into the  
3 facility, asked for a federal judge, they told him there was none  
4 here and that he was -- had to leave. And they indicated that he  
5 was outside in the street.

6 Q. And at that point did you turn and look towards the street?

7 A. I did. I immediately started walking out to the street to  
8 find out what was going on.

9 Q. And when you made it outside to the street, what did you see?

10 A. I seen the defendant in the street, screaming and yelling,  
11 pacing back and forth.

12 Q. And let me go ahead and take care of that. The man you saw  
13 in the street that day, is he present in this courtroom?

14 A. He is.

15 Q. Could you please describe what he's wearing and where he's  
16 seated?

17 A. Orange jumpsuit. The table right behind you to your -- to  
18 your right.

19 MR. McCARTHER: Your Honor, may the record reflect that  
20 the witness has identified the defendant, James E. Everett?

21 THE COURT: Without objection, it will show that.

22 BY MR. McCARTHER:

23 Q. And I believe you said he was in the street at this time, is  
24 that correct?

25 A. Yes, sir.

1 Q. And what was he doing in the street?

2 A. Screaming, yelling, waiving his arms.

3 Q. And what did you do in response to seeing this behavior from  
4 the defendant?

5 A. I hollered at him. Asked him what was going on, what the  
6 issue was and started walking towards him.

7 Q. And in response, what did you observe the defendant do?

8 A. He started walking towards us.

9 Q. Now when you say "us," who are you talking about?

10 A. Myself and two other inspectors that exited the lobby with  
11 me.

12 Q. And did the three of you and the defendant have a  
13 confrontation?

14 A. We did.

15 Q. Could you explain what happened during that confrontation?

16 A. The defendant came up to us yelling obscenities, saying "I'll  
17 kick your ass." We were asking him what he was angry about, what  
18 seemed to be the problem. When I tried to engage him, he had --  
19 didn't want to say anything to me. He looked at another  
20 Inspector and at that point he said, "I'll fucking kill you."

21 Q. Was that in -- did he say that in response to any action on  
22 your part or on the other Inspector's part?

23 A. No. We were simply standing there trying to have a  
24 conversation with him at that point.

25 Q. So after he stated, "I'll fucking kill you" to a different

1 Inspector, what did you do after that?

2 A. At that point, I circled around behind him and grabbed his  
3 arms and tried to place them behind his back and handcuff the  
4 defendant.

5 Q. And why did you try to restrain the defendant at that point?

6 A. For his safety and ours. If he's saying he's going to kill  
7 us, we don't know what he has on him, what his intentions -- we  
8 know what his intention is but we want to make sure everybody's  
9 safe.

10 Q. Was it difficult to restrain the defendant?

11 A. It was very difficult.

12 Q. How many people did it take?

13 A. It ended up taking six in total.

14 Q. What was the defendant doing while you were attempting to  
15 restrain him?

16 A. Twisting, kicking, biting, anything he could to try to get  
17 free and escape.

18 Q. Was he eventually restrained?

19 A. He was.

20 Q. And where was he finally restrained at?

21 A. He was restrained on the ground right in front the main  
22 entrance of the Federal Building.

23 Q. And would that have been on the north or south side of the  
24 building?

25 A. It was the north side of the building.

1 Q. And after he was restrained, was an EMT called to the  
2 location?

3 A. It was.

4 Q. Why?

5 A. For his protection. It was fairly obvious that he was on  
6 some type of narcotic, through experience and training where we  
7 could tell that there was something definitely going on with him.  
8 Whether it was mental or some type of drug he might on, for his  
9 protection we want EMS to come and make sure that he was going to  
10 be okay.

11 Q. While the defendant was restrained on the ground, did you  
12 notice a set of keys in close proximity to the defendant?

13 A. There was. There was a set of keys laying almost directly in  
14 front of him.

15 Q. When did you first notice these keys?

16 A. As soon as we took him to the ground, the keys were sitting  
17 there. I noticed them come out of his hand as he was going down  
18 to the ground.

19 Q. And while he was restrained, did you ask him about those car  
20 keys?

21 A. I did. I asked him if he had drove to my location, to the  
22 building.

23 Q. Why exactly would you ask him that question?

24 A. The PSOs had indicated that he had come from a silver car  
25 over on the south -- or the north side of the building, south

1 side of the street, of 12<sup>th</sup> Street. And I wanted to make sure  
2 that he had not drove that vehicle. It's emergency vehicle  
3 parking only and would have been a safety hazard to continue to  
4 have that vehicle parked there.

5 Q. And what was his response to your question, did you drive  
6 here?

7 A. His response was, "Yes, I drove and I have a gun in the car."

8 Q. Did you ask him if he had any weapons in the car?

9 A. No, I did not.

10 Q. Did you ask whether he had any weapons on his person?

11 A. No, I did not.

12 Q. Did you ask any question that would have reasonably prompted  
13 a response like that?

14 A. No, I did not.

15 Q. Did it seem to you as though he had voluntarily conveyed that  
16 information to you?

17 A. Yes, sir.

18 Q. Were you hurting the defendant at time you asked this  
19 question?

20 A. No, sir.

21 Q. Were you yelling at him?

22 A. No, sir.

23 Q. Did you use anything that could be reasonably described as  
24 coercive in asking these questions?

25 A. No, sir.

1 Q. Is it your understanding that a gun was located inside of the  
2 vehicle the defendant had pointed out?

3 A. Yes, sir.

4 Q. And would that have Ruger Model P95 9mm caliber handgun,  
5 Serial Number 316-67472?

6 A. Yes, sir.

7 Q. And is that the same gun for which the defendant is being  
8 charged with being a felon in possession of a firearm in Count  
9 Two of the Superseding Indictment in this case?

10 A. Yes, sir.

11 MR. McCARTHER: No further questions for this witness,  
12 Your Honor.

13 THE COURT: Okay. Are we concerned at all about the  
14 alleged heroin here or not?

15 MR. McCARTHER: The motion is simply to suppress the  
16 statement, Your Honor.

17 MR. ERMINE: That's correct.

18 THE COURT: Okay. All right. Thank you.

19 CROSS-EXAMINATION

20 BY MR. ERMINE:

21 Q. Is it Officer or Inspector?

22 A. It's Inspector.

23 Q. Inspector Yadon, correct?

24 A. Yes, sir.

25 Q. Inspector, when you got the call, you came from the second

1 floor and you responded outside the main entrance to the Federal  
2 Building, is that right?

3 A. That is correct.

4 Q. I think you mentioned on your direct testimony that there was  
5 a total of three people, you and two other people, is that what  
6 you testified to?

7 A. Yes, sir.

8 Q. Who were those other two people with you?

9 A. Inspector Wright and Inspector Patterson.

10 Q. Was there an Inspector Burnetta there as well?

11 A. Area Commander Burnetta responded after we have already made  
12 contact with the suspect. He came eventually but he didn't  
13 respond to the call immediately.

14 Q. Okay. And what about Inspector Schwarz?

15 A. Inspector Schwarz, he was already out on the street getting  
16 out of his vehicle. He didn't respond with us. He just happened  
17 to come up as we were talking to the suspect.

18 Q. Did each of those people take part in eventually restraining  
19 Mr. Everett?

20 A. Inspector Schwarz took part in restraining him.

21 Q. Okay. So I want to talk about the initial encounter that you  
22 had outside the building that day. I think you've testified that  
23 Mr. Everett walked essentially from this vehicle to where you  
24 were standing outside the main entrance, correct?

25 A. Correct.

1 Q. Isn't it true that when he walked up -- or let me ask it this  
2 way. When he walked up to you, he mentioned that he was  
3 muttering things essentially, right?

4 A. Yes, sir.

5 Q. Was he saying these things directly to you or was he just  
6 saying internally, to himself perhaps?

7 A. It was to us.

8 Q. Okay. When he walked towards you, isn't true that at some  
9 point after he made that initial contact with you, he turned  
10 around and walked the other direction, didn't he? And he made it  
11 a few steps?

12 A. I believe so, yes.

13 Q. Okay. So let's -- let me just ask you to tell us about that.  
14 So, he walks up towards you and then he just turned around and  
15 walked away? What happened?

16 A. I mean if he would have continued to walk, we would have  
17 allowed him to walk away. We had nothing to do with him at this  
18 point. I mean, he had made no threats to us other than some  
19 vague threats. If he would have continued to walk, we would have  
20 allowed him to walk away.

21 Q. Okay. So what ended up happening that caused him to turn  
22 around and come back?

23 A. I couldn't tell you what his thought process on that.

24 Q. Okay.

25 A. We didn't say anything to make him come back.



1 Q. That's what my question was going to be. So it's your  
2 testimony then that he wasn't responding to a command to come  
3 back, he turned around of his own volition to come back?

4 A. Correct.

5 Q. When he came back the second time, did he make any threats at  
6 that point?

7 A. Yes, he did.

8 Q. Okay. Was he placed in -- so at that point we he turns  
9 around and comes back the second time, at that point he's under  
10 arrest, correct?

11 A. No, he was not under arrest.

12 Q. Okay. Isn't true, though, at that point that's when you  
13 moved to go around behind him to restrain him?

14 A. He was being detained.

15 Q. Okay.

16 A. He wasn't necessarily under arrest at that point.

17 Q. Okay. So, what would -- what would he be -- well, let me ask  
18 this first. As you walked around behind him at this point, isn't  
19 it true that Officer Wright pulled -- put his hand on his Tazer?

20 A. Yes.

21 Q. Okay. And once you got around behind Mr. Everett, you  
22 immediately began grabbing his hands, right?

23 A. Correct.

24 Q. And his arms?

25 A. Yes.

1 Q. And you're essentially forcing them behind his back to put  
2 him in handcuffs, correct?

3 A. Correct.

4 Q. So, is he arrested at that point?

5 A. He's being detained at that point.

6 Q. And then he's ultimately taken to the ground, right?

7 A. Correct.

8 Q. By yourself and two other officers?

9 A. Correct.

10 Q. And then additional KCMOPD officers, two of them show up and  
11 then another Inspector gets -- comes as well, right?

12 A. Correct.

13 Q. So a total of six?

14 A. Correct.

15 Q. Is he arrested at that point?

16 A. At that point he's still being detained for his safety and  
17 our safety.

18 Q. Okay. So, he's handcuffed and he's laying -- is he laying  
19 face down on the ground?

20 A. He is.

21 Q. And then he's -- his pockets are searched, right?

22 A. Yes.

23 Q. Okay. So, is he arrested at that point?

24 A. At that point, we make sure that there -- there is nothing on  
25 him that can cause harm to the EMS that's going to going to be

1 responding to take him for evaluation.

2 Q. Okay. But that's when the heroin -- the Judge just mentioned  
3 that -- that's when that heroin was found in his pocket, correct?

4 A. Correct.

5 Q. So, as you're waiting for EMS and he's on the ground, he's  
6 never read his *Miranda* rights, is he, at this point?

7 A. No.

8 Q. Okay. But you did testify that you did ask him a question.  
9 You asked him -- your testimony was that you asked him at this  
10 point did he drive here?

11 A. Correct.

12 Q. Do you know how long it was from when you asked him that to  
13 when they ultimately ended up searching the car and finding the  
14 Ruger that you testified about?

15 A. No, I was -- I didn't have any part with searching the  
16 vehicle.

17 Q. Okay. Who is Senior Special Agent Vas?

18 A. Travis Vas. He's a special agent with the Federal Protective  
19 Service.

20 Q. And at the time of this incident in March was he some sort of  
21 commander at the place where you work?

22 A. He's a -- just like you have a -- he's an agent. He's on a  
23 different side than us. He works with us but he doesn't work for  
24 us.

25 Q. Okay. He's been transferred to St. Louis now I understand?

1 A. He has.

2 Q. But you're familiar with him, right?

3 A. I am.

4 Q. And you're generally familiar with this case, right?

5 A. Correct.

6 Q. Is it fair to say that he was kind of in charge of getting  
7 the reports and things ready for this case and turning them over  
8 to the prosecution?

9 A. As far as I'm aware, yes.

10 Q. Okay. So, he was basically the case agent, right?

11 A. Correct.

12 Q. Are you aware that he has provided a synopsis of the details  
13 of the investigation in this case?

14 A. I am.

15 Q. Okay. I'm going to show you what I've previously marked as  
16 Defense Exhibit #1 and I provided a copy to the Government  
17 already.

18 MR. ERMINE: May I approach the bench, Your Honor?

19 THE COURT: Yeah, you don't need to ask. Just go on up  
20 there.

21 BY MR. ERMINE:

22 Q. Inspector, let me just have you look at Exhibit #1 there and  
23 let me know when you've had a good opportunity to review it.

24 A. (Witness reviewing Exhibit #1). Okay.

25 Q. Okay. Now, does this document -- well, I'll ask you this

1 way. What does this document appear to be?

2 A. Which part there? The details, investigation, or synopsis?

3 Q. Yeah. Is this basically a synopsis of everything written  
4 down by Agent Vas?

5 A. Yeah. It looks like he's taken stuff from multiple reports.

6 Q. Okay. And do you have any reason to believe that this not  
7 Agent Vas's report?

8 THE COURT: Can we stipulate to that? I mean --

9 MR. McCARTHER: Stipulate that this Agent Vas's report?

10 THE COURT: Yeah. Yeah.

11 MR. McCARTHER: Sure. Yes.

12 MR. ERMINE: So, on that basis, we'd move for admission  
13 Defense Exhibit #1.

14 THE COURT: Any problem with Exhibit #1 to be admitted?

15 MR. McCARTHER: I'd object as to hearsay, Your Honor.

16 THE COURT: Okay. That's overruled.

17 MR. ERMINE: I want to ask you to -- and I have a copy  
18 for the Court.

19 THE COURT: Yeah, sure. Yeah. I just -- you need to  
20 give me a heads up on what we're going to do here with -- have  
21 you ever seen this report before?

22 THE WITNESS: I have not read this report.

23 THE COURT: Okay. So, I guess I'm trying to figure out  
24 what we're trying to do.

25 MR. ERMINE: I really am just trying to admit this

1 report since Agent Vas isn't here.

2 THE COURT: I'm not trying to stop you from doing  
3 anything. I'm just trying to figure out where you're going with  
4 it.

5 MR. ERMINE: Right. Yeah.

6 THE COURT: If he's not ever seen it before.

7 MR. ERMINE: Right. Yeah.

8 THE COURT: Is there parts here that you want to  
9 emphasize or what?

10 MR. ERMINE: Yes.

11 THE COURT: Okay.

12 MR. ERMINE: Essentially.

13 THE COURT: All right. Go ahead.

14 BY MR. ERMINE:

15 Q. So, I'm going to ask you to turn to page -- the third page  
16 and the first full paragraph on the third page and just ask you  
17 to read that paragraph.

18 A. The part that starts with "Everett"?

19 Q. Yes, sir.

20 A. "Everett also had a Kansas Drivers License K02057251  
21 identifying Everett. A cellular phone, lighter, two dice, a  
22 packet of Newport cigarettes, a tube of Carmex lip balm. FPS  
23 Officer Yadon asked Everett if he drove to the FPS Officer  
24 Yadon's location and if Everett had any weapons on his person.  
25 Everett responded 'Yes' and further stated 'I have a gun in the

1 car.' FPS Officer Yadon spoke with Protective Security Officer  
2 Fernando and confirmed that Everett was parked on 12<sup>th</sup> Street in  
3 an emergency vehicle only parking space with the driver's side  
4 door open. During the search incident to the arrest of Everett's  
5 person, Everett was not notified of his *Miranda* rights."

6 Q. Okay. Thank you.

7 MR. ERMINE: I'm going to skip Exhibit #2 for a second  
8 and I'll just ask if the Government would stipulate to the  
9 Affidavit. I think the Court could take judicial notice of it  
10 anyway since it's a court document.

11 THE COURT: Yeah. I don't know that we need to have him  
12 read it.

13 MR. ERMINE: Right.

14 THE COURT: I mean, if you point it out to me, I'll --  
15 I'll emphasize the parts that you're interested in me having to  
16 focus on.

17 MR. ERMINE: Yes, sir. Then just move for admission for  
18 Exhibit #3 as being self-authenticating.

19 THE COURT: Do we -- Exhibit #3?

20 MR. ERMINE: Yes, sir.

21 THE COURT: Do we have a #2?

22 MR. ERMINE: I'm going to get to #2 in a second.

23 THE COURT: Okay. So what is Exhibit #3?

24 MR. ERMINE: Exhibit #3 is Special Agent Vas's Affidavit  
25 in Support of the Criminal Complaint. I think the Court can just

1 take notice at the time. It's already been admitted at a  
2 previous hearing.

3 THE COURT: Or we can have it marked. Well, if it's  
4 marked as Exhibit #3, we'll go ahead and admit Exhibit #3 as part  
5 of the record here.

6 MR. ERMINE: All right.

7 THE COURT: Any problem from the Government?

8 MR. McCARTHER: Objection as to hearsay, Your Honor.

9 THE COURT: Again, I think it's clear that this stuff  
10 can come in.

11 MR. ERMINE: All right. And I would just ask the Court  
12 to --

13 THE COURT: I'm not trying to lecture you over there. I  
14 just -- I think the rule is pretty clear though that it comes in,  
15 so.

16 MR. McCARTHER: Sure.

17 MR. ERMINE: And I'll just point the Court specifically  
18 to Paragraph 5 on that document.

19 THE COURT: Paragraph 5 of that, right?

20 MR. ERMINE: Yes.

21 THE COURT: Okay. Let me just kind of mark what we're  
22 doing here. So, I got #1 and I've got #3 and we're looking at --  
23 we're looking at Paragraph 5?

24 MR. ERMINE: Yes, sir.

25 THE COURT: Okay. Okay.



1 BY MR. ERMINE:

2 Q. Inspector, was -- Inspector, you mentioned that Inspector  
3 Patterson was there as well during Mr. Everett's arrest?

4 A. Yes.

5 Q. Okay. Have you seen the report written by Inspector  
6 Patterson?

7 A. I have seen that one.

8 Q. I'm going to show you -- sorry. I'm going to show you what's  
9 previously marked as Defense Exhibit #2. After taking a look at  
10 that, I'll ask you if that appears to be Inspector Patterson's  
11 report?

12 A. I believe so, yes.

13 Q. Okay.

14 MR. ERMINE: We'll move for admission of Defense Exhibit  
15 #2.

16 THE COURT: Any problem?

17 MR. MCCARTHER: Same objection, Your Honor.

18 THE COURT: Okay. Same ruling. Again, have you seen  
19 this report?

20 THE WITNESS: I have seen this one.

21 THE COURT: Okay. All right.

22 BY MR. ERMINE:

23 Q. I want to direct your attention especially to the second page  
24 of this and I will provide a copy to the Court as well.

25 THE COURT: Yeah. Thank you.

1 BY MR. ERMINE:

2 Q. And I'm going to just be rather specific here. In the first  
3 paragraph there, just from the top of the page looking one, two,  
4 three, four, five, six, seven lines down, isn't it true that in  
5 this report, Inspector Patterson says quote, "I heard someone ask  
6 the subject a question and he replied, 'I have a gun in the  
7 car.'"

8 A. Yes, sir. I see it.

9 Q. Okay. Now, you mentioned that during this incident with Mr.  
10 Everett, really from the first instant you saw him -- or I guess  
11 I should say even when you were called to come down there, you  
12 were called to come down because of a report of a disorderly  
13 person, right?

14 A. Correct.

15 Q. And you testified on direct that it appeared to you based on  
16 your training and experience that it was quote, "obvious that he  
17 was on a narcotic, maybe had some mental problem," right?

18 A. Correct.

19 Q. And you mentioned that you came to that conclusion because of  
20 how strangely he was acting, right?

21 A. Correct.

22 Q. And I think maybe in your report you even mentioned that he's  
23 making incoherent statements about his son. Do you remember  
24 that?

25 A. Yes. Something when he first came into the Federal Building,

1 yes.

2 Q. Okay. And I don't know if you mentioned this on direct, I  
3 think maybe you did, that you testified he was out in the street  
4 slapping himself about the head, right?

5 A. I believe that his slapping was in the face and it was while  
6 he was in the Federal Building.

7 Q. Okay.

8 A. When he was in the street, he was just yelling and waiving  
9 his arms.

10 Q. And then when he was taken down to the ground, he was banging  
11 his head on the concrete, right?

12 A. Correct.

13 Q. In fact, he was ultimately transported to Truman by EMS,  
14 right?

15 A. Correct.

16 Q. And they were monitoring him for drug usage or mental health  
17 problems, right?

18 A. Correct.

19 Q. And are you aware that he actually ended up testing positive  
20 for PCP when he was at Truman?

21 A. I am aware of that.

22 MR. ERMINE: If I just have one moment, Your Honor?

23 THE COURT: Uh-huh.

24 MR. ERMINE: Nothing further for this witness, Your  
25 Honor. Thank you.

1 THE COURT: Okay.

2 REDIRECT EXAMINATION

3 BY MR. MCCARTHER:

4 Q. I want to first discuss Special Agent Vas. Was he present at  
5 the time in which you asked the defendant about his car keys?

6 A. I don't believe so, no.

7 Q. And so this report, what's marked as Defendant's Exhibit #1,  
8 this is a compilation of multiple people's reports, right?

9 A. Correct.

10 Q. This line where he notes "FPS Officer Yadon asked Everett if  
11 he drove to FPS Officer Yadon's location and if Everett had any  
12 weapons on his person." Whether you asked Everett if he had any  
13 weapons on his person, would he have gotten that from you or your  
14 report?

15 A. No.

16 Q. But you're the person who actually did ask the defendant a  
17 question, right?

18 A. Correct.

19 Q. And did you at any time during this entire ordeal ask the  
20 defendant about any weapons on his person or in his car or  
21 anywhere else?

22 A. No, I did not.

23 Q. I want to talk about your decision to detain the defendant.  
24 You testified on cross and some on direct about how you circled  
25 behind the defendant, is that correct?

1 A. That's correct.

2 Q. Was the defendant acting in an aggressive manner towards you  
3 and your fellow officers?

4 A. Yes, he was.

5 Q. Describe how he was doing that?

6 A. His actions, clenching of the fists, the pre-assault  
7 indicators that we learned through the Police Academy were all  
8 being exhibited as he was speaking to us.

9 Q. Was he speaking in a calm and docile manner?

10 A. No, he was not.

11 Q. How was he speaking?

12 A. A lot of screaming. A lot of yelling.

13 Q. And some of these yells were threats, is that correct?

14 A. That's correct.

15 Q. And so was it after these aggression indicators and after the  
16 threats he made that you determined that the defendant needed to  
17 be detained?

18 A. Correct.

19 MR. McCARTHER: No further questions, Your Honor.

20 THE COURT: Okay. Anything else?

21 MR. ERMINE: Just one question.

22 THE COURT: Don't ever say one question, Mr. Ermine,  
23 because it never turns out to be one question.

24 MR. ERMINE: One of these -- one of these days it will  
25 just be one. This could be the day.

1 THE COURT: All right. I'll start counting.

2 RECROSS EXAMINATION

3 BY MR. ERMINE:

4 Q. Do you -- throughout this whole process was there ever a  
5 point where you ordered Mr. Everett to come toward you or where  
6 one of the other FPS officers ordered Mr. Everett to come toward  
7 you?

8 A. No, we never ordered him. We hollered at him and asked what  
9 was going on.

10 MR. ERMINE: Thank you.

11 THE COURT: Well, that was really a compound question.

12 MR. McCARTHER: It was a trick.

13 THE COURT: Anything else?

14 MR. McCARTHER: No, Your Honor.

15 THE COURT: Okay. Let me just before you move -- let me  
16 just -- is that all the evidence the Government has?

17 MR. McCARTHER: No, Your Honor, one additional witness.

18 THE COURT: Okay. And I want to just get on this  
19 Exhibit #1, that's the report of an Officer Vas? V-O-S-S?

20 MR. McCARTHER: V-A-S, Your Honor.

21 THE COURT: V-A-S?

22 MR. McCARTHER: Special Agent Vas who was -- who is the  
23 case agent on this case.

24 THE COURT: Okay. Is there two S's, Vas, or one?

25 MR. McCARTHER: One S.

1 THE COURT: One S. Okay. And just before we excuse the  
2 -- this Inspector, although it is a Fifth Amendment issue and I  
3 understand that, we have to also factor in the fruits issue here.  
4 Are you going to have somebody present whatever else we had  
5 seized? The gun -- we've got the gun, we've got -- now I think  
6 we've got the -- the drugs, the heroin, right?

7 MR. McCARTHER: Right.

8 THE COURT: Anything else of an evidentiary value that  
9 we haven't already put in or that you intend to put in?

10 MR. McCARTHER: Your Honor -- well, two things. My  
11 understanding from the Defendant's Motion to Suppress is it was  
12 specific to the statement. But regarding fruits, the gun was  
13 found as an inventory search pursuant to a lawful tow. And so  
14 there's no issue as it relates to that statement.

15 THE COURT: Okay. All right. Now, I'm going to ask  
16 him. Who are you going to have next?

17 MR. McCARTHER: KCPD Detective Bradley Bailey, who was  
18 also present at the scene and helped detain the defendant.

19 THE COURT: Okay. All right. Well, let me ask him, I  
20 think I understand your testimony here on direct but was there  
21 ever a time during the period of time -- if I've got this right,  
22 this guy was -- this man was in the Federal Building. You get a  
23 call -- a service call to respond because there's a disturbance.

24 THE WITNESS: Uh-huh.

25 THE COURT: You go to that area. He's not there, he's

1 outside. You then approach him to try to speak to him and then  
2 you get this event that you've described here. At some point you  
3 become concerned about his well-being, his health and you call  
4 for the emergency people to take a look at him, the EMT people,  
5 is that correct?

6 THE WITNESS: Correct. Correct, Judge.

7 THE COURT: And is that the truck that comes or who is  
8 that? Who is the EMT guy?

9 THE WITNESS: The EMS -- it's -- I know that KCPD called  
10 for it and then FPS called for it. We have two different  
11 dispatch centers. So, who or what -- whether is it MAST  
12 Emergency Medical Services --

13 THE COURT: Yeah, but somebody comes from -- the EMT  
14 people come?

15 THE WITNESS: Correct.

16 THE COURT: And they come and they begin to provide some  
17 help to --

18 THE WITNESS: Correct.

19 THE COURT: -- the gentleman, right?

20 THE WITNESS: Correct.

21 THE COURT: Right. Now, at any time -- and then he's  
22 taken to the hospital then?

23 THE WITNESS: Correct.

24 THE COURT: At any time -- at that point on that date at  
25 any time while you were there, did you ever place him under



1 arrest?

2 THE WITNESS: I never did. I never -- I never told Mr.  
3 Everett that he was under arrest. I did not.

4 THE COURT: Okay. In your mind at the time, did you  
5 ever think he was -- I understand detention -- I'm talking about  
6 arrest for a crime. Did you ever arrest him for a crime and, if  
7 so, what crime?

8 THE WITNESS: I never arrested him for a crime, sir.

9 THE COURT: Okay. All right. Now, so then he goes,  
10 right, he gets taken away. Do you ever see him again?

11 THE WITNESS: I did. We were at the hospital where he  
12 was at.

13 THE COURT: Okay. So you followed them there to the  
14 hospital, right? And what was happening there at the hospital?

15 THE WITNESS: He was fighting with security staff at the  
16 hospital. I believe at one point he broke free of his  
17 restraints. I think he peed all over his hospital room and they  
18 were sedating him at that point to keep him calm.

19 THE COURT: So, were you then -- were you then there for  
20 security at the hospital or what were you --

21 THE WITNESS: After that point, I believe they had found  
22 the gun and they were finding out what procedures we needed to do  
23 for the arrest warrant.

24 THE COURT: Okay.

25 THE WITNESS: I couldn't tell you. I was just told by

1 supervisor to stand by --

2 THE COURT: Okay.

3 THE WITNESS: -- at the hospital.

4 THE COURT: Now, I've asked a far number of questions  
5 here, so I'm going to let you follow up. Anything else from the  
6 United States?

7 MR. McCARTHER: No, Your Honor.

8 THE COURT: Anything else for the defense?

9 MR. ERMINE: No further questions, Your Honor.

10 THE COURT: Okay. So this officer is excused -- or you  
11 can get off the stand now. And you've got another witness,  
12 correct?

13 MR. McCARTHER: Yes, Your Honor. The United States  
14 calls Detective Bradley Bailey to the stand.

15 THE COURT: Okay.

16 MR. McCARTHER: I'll grab him.

17 THE COURT: All right. Just come on up here and I'll  
18 place you under oath. Just come right up here. Raise your right  
19 hand, please.

20 BRADLEY BAILEY, GOVERNMENT'S WITNESS, SWORN

21 THE COURT: Take the stand over here on your left,  
22 please.

23 DIRECT EXAMINATION

24 BY MR. McCARTHER:

25 Q. Could you state your name for the record, sir?

1 A. Bradley Bailey.

2 Q. What's your occupation?

3 A. I'm a detective with Kansas City, Missouri Police Department.

4 Q. How long have you been in law enforcement, sir?

5 A. Seven years.

6 Q. And how long have you been with KCPD?

7 A. Seven years.

8 Q. And as a detective with KCPD, what's your current assignment  
9 area?

10 A. Currently I'm assigned to our Violent Crimes Intelligence  
11 Squad as part of our Violent Crimes Enforcement Division.

12 Q. And as part of that squad, what are your duties and  
13 responsibilities?

14 A. Primarily to identify and apprehend individuals involved in  
15 firearms, narcotics and other violent crimes, particularly those  
16 involving gang activity.

17 Q. Do you remember the date of March 10<sup>th</sup>, 2016?

18 A. Yes, I do.

19 Q. Were you working on that date?

20 A. I was.

21 Q. Specifically around 8:30 a.m. where were you?

22 A. I was walking out of the Jackson County Courthouse at the  
23 Intersection of 12<sup>th</sup> and Locust.

24 Q. And is that in Kansas City?

25 A. Yes, it is.

1 Q. Is that in the Western District of Missouri?

2 A. Yes, it is.

3 Q. When you walked out of the courthouse, did you see anything  
4 unusual?

5 A. Yes, I did.

6 Q. What did you see?

7 A. My partner and I were walking to our patrol vehicle that was  
8 parked on Locust Street. My attention was directed up at the  
9 intersection of 12<sup>th</sup> and Locust to a black male wearing all blue.  
10 He was shouting profanities and other inaudible statements and  
11 running around in the street.

12 Q. And upon seeing that, what was your response?

13 A. My partner and I entered our patrol vehicle and started to  
14 drive towards the male's location. We were probably about half a  
15 block away at that point.

16 Q. The man you saw in the street, is he present in the courtroom  
17 here today?

18 A. Yes, he is.

19 Q. And could you describe what he's wearing and where he's  
20 seated?

21 A. In the orange jumpsuit at the table to your back right.

22 MR. McCARTHER: Your Honor, could the record reflect the  
23 witness has identified the defendant?

24 THE COURT: Yes.

25 BY MR. McCARTHER:

1 Q. After you pulled up to the location where you saw the  
2 defendant, what did you do?

3 A. As we turned onto 12<sup>th</sup> Street, I observed the defendant  
4 walking aggressively towards front doors of the Federal Building  
5 which is on the south side of 12<sup>th</sup> Street. As he started walking  
6 towards the doors, we pulled our patrol vehicle up and parked it  
7 on 12<sup>th</sup> Street directly in front of the building.

8 Q. And what did you see happen?

9 A. As we were getting out of our vehicle, I observed four  
10 uniformed Department of Homeland Security Officers make contact  
11 with the male. The defendant was continuing to -- acting in an  
12 aggressive and erratic manner, was shouting profanity and  
13 appeared to not be following the verbal requests or commands of  
14 the officers.

15 Q. Did you go over to help?

16 A. I did.

17 Q. At what point did you go over to help?

18 A. I observed the officers attempt to place the defendant's  
19 hands behind his back to place him in handcuffs. A struggle  
20 started to ensue, at which point we continued to walk over and  
21 physically assisted in controlling the defendant.

22 Q. Was it difficult to restrain him?

23 A. Yes, it was. Our training teaches us various control  
24 techniques to take control of an individual with physical  
25 resistance. Those techniques were failing and we, in turn,

1 escorted the defendant to the ground to maintain further control.

2 Q. Was the defendant finally restrained?

3 A. After a struggle, yes. The defendant was restrained and  
4 placed in handcuffs.

5 Q. And approximately where was this?

6 A. We were just outside of the Federal Building's entrance along  
7 12<sup>th</sup> Street.

8 Q. Would that be the Richard Bolling Federal Building?

9 A. Correct.

10 Q. During the struggle, did the defendant appear to injure  
11 himself? Or immediately after the struggle?

12 A. Not that I observed, no.

13 Q. Did he do anything that gave you some concern over his  
14 physical well-being after he was restrained?

15 A. Yes, while were attempting to -- after we had placed the  
16 defendant in handcuffs and were continuing our attempts to  
17 physically restrain him on the ground, he continued to resist our  
18 techniques, was still shouting, spitting, and the defendant  
19 started to attempt to bang his head on the concrete ground.

20 Q. And when you saw that, what measure were taken to prevent  
21 that?

22 A. I was positioned up near the defendant's upper portion of his  
23 body near his head. We maintained physical control of his head  
24 to keep him from raising it off the ground and continuing to  
25 attempt to strike it on the ground.

1 Q. How would you describe the defendant's behavior at this time?

2 A. The defendant continued to act in an irrational, erratic  
3 manner.

4 Q. And what was your -- what did you do in response to seeing  
5 the defendant act in this manner?

6 A. Based on not only his verbal and physical actions but the  
7 behavior we observed prior to taking him into custody, that  
8 behavior, in and of itself, contributed to the decision to order  
9 an ambulance to the scene.

10 Q. And why would you order an EMT in that situation?

11 A. Based on my experiences as a police officer, both as a patrol  
12 officer and a detective, I've had contact with numerous  
13 individuals that were under the influence of alcohol, unknown  
14 substances or drugs or also mental disorders that act -- were  
15 acting in -- previously acted in a similar way that the defendant  
16 was. Based on those behaviors and the possibility of the  
17 defendant being under an unknown substance, we ordered an  
18 ambulance to the scene to evaluate his condition.

19 Q. So you've called an ambulance. How long did it take for the  
20 ambulance to get there?

21 A. I don't recall specifically. Maybe a couple minutes.

22 Q. In between the time you called the ambulance and the  
23 ambulance arriving, did the defendant say anything? Was he  
24 talking?

25 A. Yes.

1 Q. What was he saying?

2 A. I heard the defendant state that he was over at his nigga's  
3 house smoking kush and heard another spontaneous statement  
4 stating that the gray car over there was his and there was a gun  
5 under the seat.

6 Q. Did anyone ask him about a gun?

7 A. Not that I heard.

8 Q. Now, you noted in your report that this was a spontaneous  
9 utterance, is that correct?

10 A. Yes.

11 Q. Why did you think it was a spontaneous utterance?

12 A. While I was in the physical position of restraining and  
13 making sure that the defendant didn't continue to injure himself  
14 or other officers, my attention was focused on his upper body,  
15 his head, and those statements I heard come from him and I didn't  
16 hear any other statements or questions being asked by any officer  
17 at the scene.

18 Q. So, from your estimation, this appeared just completely  
19 voluntary. Is that fair to say?

20 A. Yes.

21 Q. Would his statement about having the gun in the car have been  
22 reasonably prompted by anything that was going on around you?

23 A. No.

24 Q. Did anyone ask any questions regarding any weapons on his  
25 person or in his car or anywhere else?



1 A. Not that I recall.

2 Q. Did you hear anyone interrogating the defendant during this  
3 time?

4 A. I did not.

5 Q. Ultimately it's your understanding that a gun was located in  
6 the gray car that the defendant had referenced?

7 A. Yes.

8 Q. And would that have been a Ruger Model P95 9mm handgun,  
9 Serial Number 316-67472?

10 A. Yes.

11 Q. And is that the same gun for which the defendant is charged  
12 in Count Two of the Superseding Indictment with being a felon in  
13 possession of a firearm?

14 A. Yes.

15 MR. McCARTHER: I have no further questions at this  
16 time, Your Honor.

17 THE COURT: Cross.

18 CROSS-EXAMINATION

19 BY MR. ERMINE:

20 Q. Detective, you testified that as you were pulling up with  
21 your partner you saw Mr. Everett walking aggressively toward the  
22 doors of the Federal Building?

23 A. Yes, sir.

24 Q. And you mentioned that there were four FPS officers that were  
25 making contact with him?

1 A. Yes.

2 Q. Could you hear what was being said at that point?

3 A. Only by the defendant.

4 Q. Okay. You mentioned that in your direct that he was not  
5 following verbal requests. What sorts of verbal requests were  
6 being given that he wasn't following?

7 A. From the distance that I was at, I could only hear voices  
8 from the officers. I couldn't make out anything that was being  
9 said.

10 Q. Okay. When you got to where all of these people were, was  
11 Mr. Everett already on the ground at that point?

12 A. No.

13 Q. Okay. So, did you assist in helping to take him to the  
14 ground?

15 A. I believe I did, yes.

16 Q. Okay. At that point, were you aware of what he was being  
17 arrested for?

18 A. I was not.

19 Q. You mentioned that you had seen him acting aggressively,  
20 right?

21 A. Yes.

22 Q. He's act -- was he acting erratically?

23 A. Yes.

24 Q. And you testified that based on your training and experience,  
25 he appeared to be under the influence of some sort of narcotic,

1 correct?

2 A. Either alcohol, narcotic or suffering from some sort of  
3 mental disorder, yes.

4 Q. Okay. And that was based on his demeanor?

5 A. Yes.

6 Q. And based on his behavior?

7 A. Uh-huh. Yes.

8 Q. Were you the one who actually issued the citation for the car  
9 that was parked?

10 A. I can't recall if it was me personally or my partner, but  
11 either my partner and I did, yes.

12 Q. You weren't the person that searched the car, though, were  
13 you?

14 A. I don't recall if I was or not.

15 Q. Do you know if it was searched before or after the citation  
16 was issued?

17 A. I believe it was during.

18 Q. Okay. Did you ever attempt to contact the owner of that car?

19 A. I don't recall.

20 Q. You mentioned that you are a detective, you work with a  
21 Violent Crimes Intelligence Squad, correct?

22 A. Yes.

23 Q. Are you aware of any rules or policies that detail when the  
24 Kansas City, Missouri Police Department can go to assist with  
25 something that's going on at the Federal Building?

1 A. I'm not aware.

2 Q. Are you aware of any limitation on your ability to go help  
3 them out?

4 A. I'm not.

5 Q. Okay.

6 MR. ERMINE: If I could have one moment, Your Honor?  
7 Nothing further. Thank you.

8 THE COURT: Okay. Anything else?

9 MR. McCARTHER: Yes, briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. McCARTHER:

12 Q. At some point was a safety protective hood placed on the  
13 defendant?

14 A. Yes.

15 Q. And why was this done?

16 A. The defendant had previously spat at officers and was  
17 continuing to spit toward officers and also the paramedics once  
18 they arrived on scene.

19 Q. Was there also a concern about potential biting by the  
20 defendant?

21 A. I believe there was, yes.

22 Q. Now, describe this hood for me. Does it cover the entire  
23 face of an individual?

24 A. Yes, it does.

25 Q. And while the defendant was on the ground restrained, was

1 anyone trying to interrogate him or ask him questions about any  
2 criminal activity --

3 A. No.

4 Q. -- that was taking place?

5 A. No.

6 Q. Have you been -- have you been a part of any interrogations  
7 in your career as a law enforcement officer?

8 A. Yes, I have.

9 Q. Did the circumstances of those interrogations that you have  
10 done, did those at all match the circumstances of the defendant  
11 being restraining in this case?

12 A. No, they do not.

13 Q. Okay.

14 MR. McCARTHER: Nothing further, Your Honor.

15 THE COURT: Anything else?

16 MR. ERMINE: No follow up. Thank you.

17 THE COURT: Okay. You can step down. Thank you.

18 Additional evidence?

19 MR. McCARTHER: Nothing further, Your Honor.

20 THE COURT: Any evidence by the defense?

21 MR. ERMINE: No, sir. I think I admitted the three  
22 exhibits, so.

23 THE COURT: Yeah. Okay. All right. Then does that  
24 conclude the -- all the evidence we're going to hear? Nothing  
25 else, right?

1 MR. McCARTHER: Yes, Your Honor.

2 MR. ERMINE: That's correct.

3 THE COURT: Okay. All right. Thank you.

4 (Court Adjourned at 3:13 p.m.)

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5  
6 I certify that the foregoing is a correct transcript  
7 from the electronic sound recording of the proceeding in the  
8 above-entitled matter.

9  
10 /s/ Lissa C. Whittaker  
Signature of transcriber

January 9, 2017  
Date